

Exhibit B

Wardenski, Joseph

From: Takemoto, Benjamin (CIV) <Benjamin.Takemoto@usdoj.gov>
Sent: Thursday, October 1, 2020 12:57 PM
To: Wardenski, Joseph; Wells, Carlotta (CIV); Dickey, Jennifer B. (OASG)
Cc: Colangelo, Matthew; Fajana, Morenike; Krishnan, Sabita (Law); McKenzie, Lindsay; Pepe, Joseph (Law)
Subject: RE: New York v. ED - Administrative Record

Hi Joe,

Thank you for your e-mail. Our colleagues at the agency are working diligently on these issues, and we will of course keep you updated.

Best,
Ben

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Benjamin T. Takemoto
Trial Attorney
U.S. Department of Justice, Civil Division, Federal Programs Branch
Ben Franklin Station, P.O. Box 883, Washington, DC 20044
Tel: (202) 532-4252 / Fax: (202) 616-8460

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From: Wardenski, Joseph <Joseph.Wardenski@ag.ny.gov>
Sent: Thursday, October 01, 2020 12:03 PM
To: Takemoto, Benjamin (CIV) <btakemot@CIV.USDOJ.GOV>; Wells, Carlotta (CIV) <CWells@CIV.USDOJ.GOV>; Dickey, Jennifer B. (OASG) <jbdickey@jmd.usdoj.gov>
Cc: Colangelo, Matthew <Matthew.Colangelo@ag.ny.gov>; Fajana, Morenike <Morenike.Fajana@ag.ny.gov>; Krishnan, Sabita (Law) <skrishna@law.nyc.gov>; McKenzie, Lindsay <Lindsay.McKenzie@ag.ny.gov>; Pepe, Joseph (Law) <jpepe@law.nyc.gov>
Subject: New York v. ED - Administrative Record

Counsel,

We understand from Rebecca Kopplin's email below that the Department of Education has agreed to supplement the administrative record in response to the joint deficiency letter sent last week by the *VRLC v. DeVos* plaintiffs' counsel on behalf of plaintiffs in that case, *New York v. Department of Education*, and *Pennsylvania v. DeVos*. Given the upcoming briefing deadlines, please let us know as soon as possible when you expect to make the supplemental productions and the anticipated volume of those productions. Thank you very much.

Best,
Joe

Joseph J. Wardenski | Senior Trial Counsel

New York State Office of the Attorney General

28 Liberty Street | New York, New York 10005

Tel: (212) 416-8441 | Cell: (347) 931-8681 | Fax: (212) 416-6007

Joseph.Wardenski@ag.ny.gov | ag.ny.gov

Pronouns: he/him/his

From: Kopplin, Rebecca M. (CIV) <Rebecca.M.Kopplin@usdoj.gov>

Sent: Wednesday, September 30, 2020 9:18 PM

To: Smith, Robin A. <RSmith@mofo.com>; Myers, Steven A. (CIV) <Steven.A.Myers@usdoj.gov>

Cc: Fleming Nolen, Natalie A. <nflemingnolen@mofo.com>; Vij, Vanshika <VVij@mofo.com>; Crujido, Caitlin A. <CCrujido@mofo.com>; Harris, Evan M. <EHarris@mofo.com>; Chaudhry, Neena <nchaudhry@nwlc.org>; Patel, Shiwali <spatel@nwlc.org>; Tang, Elizabeth <etang@nwlc.org>; Chandy, Sunu <schandy@nwlc.org>; Diane Rosenfeld <rosenfel@law.harvard.edu>; Martin, Emily <emartin@nwlc.org>

Subject: RE: VRLC v. DeVos, No. 20-11104 (D. Mass.)

External Email

Counsel,

One clarification to my earlier email: the estimate of next week is for most of the supplemental materials, but the agency is still evaluating the timeline for external meeting calendar invitations.

Regards,

Rebecca

Rebecca M. Kopplin

Trial Attorney | United States Department of Justice

Civil Division | Federal Programs Branch

1100 L Street NW | Washington, D.C. 20005

Rebecca.M.Kopplin@usdoj.gov | (202) 514-3953

From: Kopplin, Rebecca M. (CIV)

Sent: Wednesday, September 30, 2020 7:50 PM

To: 'Smith, Robin A.' <RSmith@mofo.com>; Myers, Steven A. (CIV) <stmyers@CIV.USDOJ.GOV>

Cc: Fleming Nolen, Natalie A. <nflemingnolen@mofo.com>; Vij, Vanshika <VVij@mofo.com>; Crujido, Caitlin A. <CCrujido@mofo.com>; Harris, Evan M. <EHarris@mofo.com>; Chaudhry, Neena <nchaudhry@nwlc.org>; Patel, Shiwali <spatel@nwlc.org>; Tang, Elizabeth <etang@nwlc.org>; Chandy, Sunu <schandy@nwlc.org>; Diane Rosenfeld <rosenfel@law.harvard.edu>; Martin, Emily <emartin@nwlc.org>

Subject: RE: VRLC v. DeVos, No. 20-11104 (D. Mass.)

Counsel,

We've consulted with the Department of Education (Department or ED) about your September 25 letter concerning the administrative record for *Victim Rights Law Center v. DeVos*, No. 1:20-cv-11104-WGY (D. Mass., Sept. 4, 2020), *New York v. DeVos*, No. 20-cv-04260-JGK (S.D.N.Y., Sept. 3, 2020), and *Pennsylvania v. DeVos*, No. 20-cv-01468-CJN (D.D.C., Sept. 4, 2020).

With regard to documents relating to the regulatory impact analysis (RIA) in the notice of proposed rulemaking (NPRM), many of these documents are already included in the administrative record. *See e.g.*, AR_292802-293592 (public reports of Title IX reports and investigations at 55 institutions of higher education nationwide). Some documents released in response to the Freedom of Information Act request from the National Center on Youth Law regarding the RIA NPRM were inadvertently omitted from the administrative record and will be produced in a supplement to the administrative record. One of the records that will be included in the supplement included a link to the 2017 annual report from the University of New Mexico. That report cannot now be located and will not be included in the supplement. In addition, the Department identified one nonprivileged document considered in developing the RIA for the Final Rule, which will also be included in a supplement to the administrative record.

Some documents previously produced as part of the administrative record in the *SurvJustice* litigation, including the examples you provided, were inadvertently omitted when the files were transferred from the *SurvJustice* administrative record to the administrative record for the Final Rule. The agency is working with the contractor to identify the documents that were not transferred and will include them in the supplement to the administrative record.

Finally, ED confirms that the administrative record includes nonprivileged emails and documents related to or reflecting meetings or listening sessions held between the Department and outside participants regarding the development of the Department's Title IX 2017 Guidance or NPRM held between January 2017 and May 6, 2020, when the Final Rule was announced. The administrative record also includes other documents, including studies or reports, case law or law review articles, and press articles, sent to Department officials from outside parties or shared among Department officials and considered in the development of the 2017 Guidance, NPRM, and/or Final Rule. As in the *SurvJustice* administrative record, ED will include external meeting calendar invitations in the supplement to the administrative record. Internal meeting calendar invitations, however, have not been included in the administrative record as such meeting invitations themselves were not considered or relied upon in developing the Final Rule.

The agency currently expects to produce the supplement to the administrative record to you next week, and to file it with the various courts shortly after.

Regards,

Rebecca

Rebecca M. Kopplin

Trial Attorney | United States Department of Justice

Civil Division | Federal Programs Branch

1100 L Street NW | Washington, D.C. 20005

Rebecca.M.Kopplin@usdoj.gov | (202) 514-3953

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